

TITLE 14: COMMERCE
CHAPTER I: DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

PART 528
ILLINOIS FILM PRODUCTION SERVICES TAX CREDIT PROGRAM

Section

528.10	Purpose
528.20	Definitions
528.30	Eligibility Determination
528.40	Application Process and Requirements
528.50	Evaluation of Application
528.60	Approval/Denial of Applications
528.62	Economic Impact Data
528.63	Diversity Impact Data
528.65	Accredited Production Certification
528.70	Request for Tax Credit Certificate
528.71	Approval/Denial of Tax Credit Certificate Request
528.75	Amount and Duration of Tax Credit
528.80	Interim and Final Film Tax Credit Certifications (Repealed)
528.85	Transfer of Tax Credit
528.86	Illinois Production Workforce Development Fund
528.90	Non-Compliance Provisions (Repealed)
528.100	Books and Records
528.110	Data for Reports to the General Assembly
528.120	Confidentiality of Documents and Data

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Section 528.20 Definitions

The following definitions are applicable to this Part:

"Accredited Production" means:

for productions commencing before May 1, 2006, a film, video, commercial, or television production that has been certified by the Department in which the aggregate Illinois labor expenditures included in the cost of the production exceed \$100,000 for productions of 30 minutes or longer, or \$50,000 for productions of less than 30 minutes;

for productions commencing on or after May 1, 2006, ~~"accredited production"~~ means a film, video, commercial, or television production that has been certified by the Department in which the aggregate Illinois production spending included in the cost of the production exceeds \$100,000 for productions of 30 minutes or longer, or \$50,000 for productions of less than 30 minutes.

"Accredited Production~~production~~" does not include a production that:

is news, current events, or public programming, or a program that includes weather or market reports;

is a talk show;

is a production in respect of a game, questionnaire, or contest;

is a sports event or live activity;

is a gala presentation or awards show;

is a finished production that solicits funds;

is a production produced by a film production company if records, as required by 18 U.S.C.~~USC~~ 2257, are to be maintained by that film production company with respect to any performer portrayed in that single media or multimedia program; or

is a production produced primarily for industrial, corporate, or institutional purposes. (Section 10 of the Act)

"Accredited Production Certificate" means a certificate issued by the Department certifying that the production is an accredited production that meets the guidelines of the Act. (Section 10 of the Act)

"Act" means the Film Production Services Tax Credit Act [35 ILCS 16].

"Applicant" means a taxpayer that is a film production company or a taxpayer working in association with a film production company that is operating or has operated an accredited production located within the State of Illinois and that:

owns the copyright in the accredited production throughout the Illinois production period; or

has contracted directly with the owner of the copyright in the accredited production or a person acting on behalf of the owner to provide services for the accredited production, when the owner of the copyright is not an eligible production corporation. (Section 10 of the Act)

"Business Owned by a Person with a Disability" means a business concern that is at least 51% owned by one or more persons with a disability and the management and daily business operation of which are controlled by one or more of the persons with disabilities who own it. A not-for-profit agency for persons with disabilities that is exempt from taxation under section 501 of the Internal Revenue Code of 1986 is also considered a "business owned by a person with a disability". [30 ILCS 575/2(A)(4.1)]

"Commencement or Start of Principal Filming or Taping" means the date on which filming, taping, or photographing of principal actors or action of an accredited production commences. In the case of an animated production, the commencement or start of filming or taping is the date on which the creation of artwork to be used in actual frames of the film begins.

"Commercial Domicile" means the principal place from which the trade or business of a person is directed or managed.

"Credit" or "Tax Credit" means, for an accredited production commencing on or after January 1, 2009, the amount equal to:

30% of the Illinois production spending for the taxable year; plus

15% of the Illinois labor expenditures generated by the employment of residents of geographic areas of high unemployment determined by census tracts where the unemployment rate is at least 150 percent of the State's annual average ~~high poverty or high unemployment, as determined by the Department (Section 10 of this Act).~~

"Department" means the Illinois Department of Commerce and Economic Opportunity, ~~formerly known as the Illinois Department of Commerce and Community Affairs.~~

"Director" means the Director of the Department.

"Diversity Data or Information" means data pertaining to gender, race, ethnicity and ~~disability~~ of all employees of the applicant.

"Diversity Plan" means a written document through which the applicant assures the Department that minorities and females will have equal opportunities in recruitment, selection, appointment, promotion, training, and related employment areas in the accredited production. The diversity plan must also describe the manner in which the applicant plans on hiring vendors certified by the Business Enterprise Council under the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575] with respect to the accredited production. The diversity plan must also detail the manner in which the applicant proposes to achieve its goals to ensure employment of protected classes to achieve a diverse workforce, rather than merely to assure nondiscrimination.

"Economic Impact Data" means data pertaining to the types of jobs (production, talent and vendor) created and retained in Illinois, as well as the total amount an applicant spends in Illinois on the accredited production.

"Employee of the Applicant" or "Employee", for accredited productions commencing on or after May 1, 2006, means only an individual who is an employee of the applicant for purposes of employment taxes imposed under subtitle C of the Internal Revenue Code (26 ~~U.S.C.~~ U.S.C. subtitle C).

"Entry Level Positions" means the lowest level of a hierarchy in a production, including untrained or unskilled labor working on a production, such as a production assistant.

"Illinois Labor Expenditure" means ~~salary or Illinois gross~~ wages paid to employees of the applicant for services on the accredited production. To qualify as an Illinois labor expenditure, the expenditure must be:

reasonable in the circumstances;

included in the federal income tax basis of the property. For purposes of this provision, an expenditure that is immediately expensed as an advertising cost under Treasury Regulations section 1.162-1(a) (26 CFR 1.162-1(a)) or as a qualified film, television or commercial production cost under section 181 of the Internal Revenue Code (26 U.S.C. 181) shall be treated as included in the federal income tax basis of the accredited production if the expenditure would be required to be capitalized under

section 263A of the Internal Revenue Code (26 U.S.C. 263A) if that section applied to the accredited production;

incurred by the applicant for services on or after January 1, 2004;

incurred for the production stages of the accredited production, from the final script stage to the end of the post-production stage;

limited to the first \$25,000 of wages paid or incurred to each employee of an accredited production commencing before May 1, 2006 and the first \$100,000 of wages paid or incurred to each employee of an accredited production commencing on or after May 1, 2006 and prior to July 1, 2022. For productions commencing on or after July 1, 2022, limited to the first \$500,000 of wages paid or incurred to each nonresident or resident employee of a production company or loan out company that provides in-State services to a production, whether those wages are paid or incurred by the production company, loan out company, or both, subject to withholding payments provided for in Article 7 of the Illinois Income Tax Act. For purposes of calculating Illinois labor expenditures for a television series, the nonresident wage limitations provided under this subparagraph are applied to the entire season;

for an accredited production commencing before May 1, 2006, exclusive of Illinois gross wages and benefits paid to or incurred for the 2 highest paid employees of the accredited production;

directly attributable to the accredited production;

Prior to July 1, 2022, paid to persons residing in Illinois at the time the payments were made. For a production commencing on or after July 1, 2022, paid to persons resident in Illinois and nonresidents at the time the payments were made. For purposes of this subparagraph, only wages paid to nonresidents working in the following positions shall be considered Illinois labor expenditures: Writer, Director, Director of Photography, Production Designer, Costume Designer, Production Accountant, VFX Supervisor, Editor, Composer, and Actor, subject to the limitations set forth under this subparagraph. For an accredited Illinois production spending \$25,000,000 or less, no more than 2 nonresident actors' wages shall qualify as an Illinois labor expenditure. For an accredited production with Illinois production spending of more than \$25,000,000, no more than 4 nonresident actor's wages shall qualify as Illinois labor expenditures; and

214 *paid for services rendered in Illinois. (Section 10 of the Act)*
215

216 *"Illinois Production Spending" means the expenses incurred by the applicant that*
217 *are reasonable under the circumstances and directly attributable to the accredited*
218 *production, including, without limitation, all of the following:*
219

220 *expenses to purchase, from vendors within Illinois, tangible personal*
221 *property that is used in the accredited production in Illinois;*
222

223 *expenses to acquire services, from vendors in Illinois, for film production*
224 *and post-production (which includes editing and processing) in Illinois;*
225 *and*
226

227 *for a production commencing before July 1, 2022, compensation, not to*
228 *exceed \$100,000 for any one employee of the applicant, for contractual or*
229 *salaried employees who are Illinois residents performing services with*
230 *respect to the accredited production in Illinois. (Section 10 of the Act) For*
231 *a production commencing on or after July 1, 2022, the compensation, not*
232 *to exceed \$500,000 for any one employee, for contractual or salaried*
233 *employees who are Illinois residents or nonresident employees, subject to*
234 *the limitations set forth under Section 10 of the Act.*
235

236 ~~"Illinois Post Production Spending" means expenses incurred by the applicant~~
237 ~~that are:~~
238

239 ~~reasonable under the circumstances; and~~
240

241 ~~directly attributable to the accredited production, for editing or processing~~
242 ~~of original content employing traditional, emerging or new editing or~~
243 ~~processing techniques used for picture, sound and music editorial,~~
244 ~~rerecording and mixing, visual effects, graphic design, original scoring,~~
245 ~~animation, and musical composition.~~
246

247 ~~"Illinois Post Production Spending" does not include the editing or processing~~
248 ~~of a previously approved accredited production.~~
249

250 "Illinois Resident" means an individual who is domiciled in this State during the
251 accredited production. Except in a case in which the applicant has actual
252 knowledge, as shown in its books and records, that an individual is not an Illinois
253 resident, the possession by an individual of a driver's license or other
254 identification issued by this State prior to the commencement of work by the
255 individual on the accredited production shall be sufficient proof that the

individual is an Illinois resident and the address on the license or identification shall be deemed correct.

"Jobs Created and Retained" shall be measured in full-time equivalent jobs. In the case of a person hired as an "extra", each person hired for each day shall be deemed a full-time equivalent job for that day, based on the film industry standard equivalency of a "hire", which is a per day, per person standard. In other words, when the film industry hires an "extra" it considers each "extra" position to be a one day job that was created to fill a particular position for a particular purpose for a particular time.

"Loan Out Company" means a personal service corporation or other entity that is under contract with the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production, but does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation. (Section 10 of the Act)

"Management Position" means anyone in a supervisory or managerial position who has control over other employees who report to that individual. Management roles include, but are not limited to, coordinators, directors, managers, supervisors, producers, masters and department heads.

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

American Indian or Alaska Native (a person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment).

Asian (a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, but not limited to, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam);

Black or African American (a person having origins in any of the black racial groups of Africa);

Hispanic or Latino (a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race); or

Native Hawaiian or Other Pacific Islander (a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands). [30 ILCS 575/2(A)(1)].

"Minority Owned Business" means a *business concern*:

that is at least 51% owned by one or more minority persons; or

in the case of a corporation, at least 51% of the stock in which is owned by one or more minority persons; and

the management and daily business operations of which are controlled by one or more of the minority individuals who own it. [30 ILCS 575/2(A)(3)].

"Personal Service Corporation" means a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners.

~~"Person with a Disability" means a person who is a citizen or lawful resident of the United States and is a person with a disability under Section 2(A)(2.1) of the Business Enterprise for Minorities, Females, and Person with Disabilities Act. [30 ILCS 575/2(A)(2.05)]~~

~~"Commencement or Start of Principal Filming or Taping" means the date on which actual filming or taping of an accredited production commences. In other words, principal filming or taping begins at the culmination of preparation activity and starts with photography or taping of principal actors or action. In the case of an animated production, the commencement or start of filming or taping is the date on which begins the creation of artwork to be used in actual frames in the film.~~

"Production Staff and Crew" means office and production staff, including, but not limited to, accountants, coordinators, secretaries, camera, casting, construction, costume, electric, grip, location, hair, make-up, props, swing gang, set decorating, sound, and transportation.

"Post-Production" means editing or processing of original content employing traditional, emerging or new editing or processing techniques used for picture, sound and music editorial, rerecording and mixing, visual effects, graphic design, original scoring, animation, and musical composition.

"Post-Production Staff and Crew" means post-production staff, including, but not limited to, film editor, post-production supervisor, colorist, visual effects

producer, visual effects creative director, visual effects supervisor, visual effects editor, compositor, rotoscope artists, matte painter, sound designer, dialogue editor, sound editor, re-recording mixer, music supervisor, composer, foley artist, mixer, and music editor.

"State" means the State of Illinois.

"Talent Related Positions" means any speaking, background or extra roles that appear in front of the camera. Talent refers to on screen performers holding these positions.

"Tax Credit Certificate" means the tax credit certificate issued by the Department to the applicant certifying that it has complied with all statutory requirements of the Act and this Part and that it is entitled to a credit under the Act.

"Taxpayer" means any person defined by, and subject to, the tax imposed by the Illinois Income Tax Act [35 ILCS 5/1501(a)(18) and (a)(24)].

"Treasury Regulations" means the rules of the U.S. Internal Revenue Service published at Title 26 of the Code of Federal Regulations.

"Vendor in Illinois". Expenditures for purchases of tangible personal property or services from a vendor in Illinois shall mean:

Purchases of tangible personal property for use in Illinois on an accredited production from a person who is registered under the Illinois Retailers' Occupation Tax Act (ROTA) [35 ILCS 120]. A copy of the purchase receipt showing that the purchase was made at an Illinois location and that Illinois Retailers' Occupation Tax was paid shall be sufficient proof that the purchase was made from a vendor in Illinois. For tangible personal property ordered by mail, telephone or internet, a copy of the seller's ROTA registration certificate, along with a receipt showing that Illinois Use Tax was collected by the vendor, shall be sufficient proof that the purchase was made from a vendor in Illinois. Documentation that shows that Illinois Use Tax was collected by the vendor, but either does not show an Illinois address for the sale or is not accompanied by a ROTA registration certificate, shall not be sufficient proof that the purchase was made from a vendor in Illinois.

The lease or rental of real property located in Illinois for use in an accredited production, including hotels or other lodging for employees working on the accredited production.

The lease or rental of an automobile (as defined in the Illinois Automobile Renting Occupation and Use Tax Act [35 ILCS 155]) for use in an accredited production on which the rentor collects the Illinois Automobile Renting Occupation and Use Tax from the rentee.

The lease or rental of other tangible personal property for use in an accredited production if the owner of the property has paid Illinois Use Tax on the property. A copy of the invoice or receipt for the lease or rental showing an Illinois address for the lessor, and showing that no other state's sales tax is collected from the lessee, shall be sufficient proof that the transaction was with a vendor in Illinois.

The purchase of financial services (including insurance and the borrowing of funds) from a lender or insurer whose commercial domicile is in this State.

The purchase of other services with respect to an accredited production from an Illinois resident or from a person whose commercial domicile is in this State. For purposes of this provision only, the commercial domicile of a person ~~is their~~^{whose} business address (as shown in the records of the applicant) ~~is~~ in this State.

A vendor in Illinois that is a corporation, limited partnership, limited liability company, or limited liability partnership must register and remain an entity in good standing with the Illinois Secretary of State, Department of Business Services, throughout the duration of the production.

"Vendor Related Positions" means jobs obtained or created through a subcontractor, which includes but is not limited to security, janitorial, printing, florist, dry cleaners, and limousine services.

"Wages" means all compensation paid for services rendered by an employee in connection with an accredited production, including health, life, and disability insurance premiums, FICA taxes, pension contributions, expense reimbursement, and accrued vacation and sick pay.

"Woman" means a person who is a citizen or lawful permanent resident of the United States and who is of the female gender. [30 ILCS 575/2(A)(2)]

"Women Owned Business" means a business concern:

that is at least 51% owned by one or more women; or

in the case of a corporation, at least 51% of the stock in which is owned by one or more women; and

the management and daily business operations of which are controlled by one or more of the women who own it. [30 ILCS 575/2(A)(4)]

(Source: Amended at 47 Ill. Reg. _____, effective _____)

Section 528.65 Accredited Production Certificate

a) Upon approval of an application, the Department will issue an accredited production certificate certifying that the production is an accredited production that meets the statutory requirements of the Act as well as the corresponding administrative rules within this Part. When the Department issues an accredited production certificate, this certificate does not automatically entitle the applicant to a tax credit. Rather, the tax credit is only awarded after an accredited production has been completed, the applicant submits its request for tax credit certificate, and the applicant successfully demonstrates to the Department that it has complied with its diversity plan or that it has made good-faith efforts to comply with its diversity plan.

b) The accredited production must commence no later than one year following the issuance of the accredited production certificate. The Department has the discretion to extend the one-year period in extenuating circumstances, provided the applicant submits a written request outlining the circumstances for which it needs an extension.

(Source: Amended at 47 Ill. Reg. _____, effective _____)

Section 528.85 Transfer of Tax Credit

a) *A transfer of the credit may be made by the applicant earning the credit within one year after the credit is awarded in accordance with rules adopted by the Department of Commerce and Economic Opportunity. Beginning July 1, 2023, credits transferred under this Section are subject to a transfer fee pursuant to Section 528.85(e)(2).* (Section 213 of the Illinois Income Tax Act)

b) For purposes of this provision, a tax credit is earned on the date that the tax credit certificate is issued under Section 528.70.

c) Tax credits earned by an applicant in a taxable year ending prior to July 11, 2005 may not be transferred.

- d) For purposes of this Section, a tax credit earned by a partnership or subchapter S corporation shall be treated as having been earned by its partners in the amounts determined under 86 Ill. Adm. Code 100.2185(c).
- e) Transfer of a tax credit shall be made as follows:
- 1) The applicant earning the credit shall request the transfer from the Department, in writing, identifying the transferees (name, tax identification number, mailing address) and the amount to be transferred to each transferee, and the applicant shall return the tax credit certificate to the Department, together with its transfer request. The applicant is allowed to transfer or allocate a single credit to no more than 10 transferees.
 - 2) Beginning July 1, 2023 the transferor shall pay to the Department, upon notification of a transfer, a fee equal to 2.5% of the transferred credit amount eligible for nonresident wages, as described in Section 10 of the Film Production Services Tax Credit Act of 2008, and an additional fee of 0.25% of the total amount of the transferred credit that is not calculated on nonresident wages, which shall be deposited into the Illinois Production Workforce Development Fund.
 - 32) A request for transfer may be submitted with the applicant's request for the tax credit certificate under Section 528.70. The Department may issue the requested certificates of transfer in lieu of the tax credit certificate.
 - 43) If the transfer request is made within one year of issuance ~~timely~~ and meets the requirements of this Section, the Department shall issue a certificate of transfer to each transferee, identifying the original tax credit certificate and stating the amount of the credit transferred.
 - 54) If the applicant earning the credit transfers less than the full amount of the credit, the Department shall issue a certificate of transfer to the applicant identifying the original tax credit certificate and stating the amount of tax credit retained by the applicant.
 - 65) If the person transferring the credit is a partner or shareholder in a partnership or subchapter S corporation that earned the credit, that person shall submit to the Department, either the original tax credit certificate or copies of the tax credit certificates and copies of the Schedule K-1-P received by that person from the partnership or subchapter S corporation stating that person's share of the credit.

(Source: Amended at 47 Ill. Reg. _____, effective _____)

Section 528.86 Illinois Production Workforce Development Fund

- a) The Illinois Production Workforce Development Fund is created as a special fund in the State Treasury. Beginning July 1, 2022, amounts paid to the Department of Commerce and Economic Opportunity pursuant to Section 213 of the Illinois Income Tax Act shall be deposited into the Fund. The Fund shall be used exclusively to provide grants to community-based organizations, labor organizations, private and public universities, community colleges, and other organizations and institutions that may be deemed appropriate by the Department to administer workforce training programs that support efforts to recruit, hire, promote, retain, develop, and train a diverse and inclusive workforce in the film industry.
- b) Beginning July 1, 2023 credits transferred under Section 528.85 are subject to a transfer fee pursuant to 528.85(e)(2) which shall be deposited into the Illinois Production Workforce Development Fund.
- c) The Department may request that the State Comptroller and the State Treasurer advance amounts to the Fund on an annual basis not to exceed \$1,000,000 in any fiscal year. The Department shall reimburse the fund from which the moneys are advanced in the same fiscal year for any such advance payments via statutory transfer.
- d) Of the appropriated funds in a given fiscal year, 50% of the appropriated funds shall be reserved for organizations that meet one of the following criteria. The organization is:
 - 1) a minority-owned business, as defined by the Business Enterprise for Minorities, Women, and Persons with Disabilities Act;
 - 2) located in an underserved area, as defined by the Economic Development for a Growing Economy Tax Credit Act; or
 - 3) on an annual basis, training a cohort of program participants where at least 50% of the program participants are either a minority person, as defined by the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, or reside in an underserved area, as defined by the Economic Development for a Growing Economy Tax Credit Act.

(Source: Amended at 47 Ill. Reg. _____, effective _____)